

RD:PAD
9/30/08

RESOLUTION NO. 74604

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN JOSÉ
DECLARING INTENTION TO ESTABLISH CONVENTION CENTER
FACILITIES DISTRICT NO. 2008-1 AND TO LEVY A SPECIAL TAX
THEREIN TO FINANCE SPECIFIED ACQUISITION, CONSTRUCTION,
RECONSTRUCTION, REPLACEMENT, REHABILITATION AND
UPGRADE OF THE SAN JOSÉ CONVENTION CENTER.**

WHEREAS, the City of San José (the “City”) is a municipal corporation and charter city duly organized and existing under a charter pursuant to which the City has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Sections 3, 5 and 7 of Article XI of the Constitution of the State of California and the Charter of the City; and

WHEREAS, Chapter 14.32 (the “Chapter”) of the San José Municipal Code provides that the City is authorized to form a Convention Center Facilities District to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center under the provisions of the Mello-Roos Community Facilities Act of 1982 (Sections 53311 and following of the California Government Code) as they existed at the time of the adoption of the Chapter (the “Act”) and as modified by the Chapter; and

WHEREAS, the City Council has therefore duly considered the advisability and necessity of establishing a Convention Center Facilities District within its jurisdictional boundaries and levying a special tax therein, to finance the acquisition, construction, reconstruction, replacement, rehabilitation and upgrade of the San José Convention Center under and pursuant to the Chapter; and

WHEREAS, the Council is fully advised in this matter;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY SAN JOSÉ THAT:

1. The City hereby specifically finds and declares that the actions authorized hereby constitute and are with respect to public affairs of the City and that the statements, findings and determinations of the City set forth above are true and correct and that the consideration of the formation of the Convention Center Facilities District is important to the public welfare of the residents of the City, and may result in significant public benefits.
2. It is the intention of the City Council, and the City Council hereby proposes, to establish a Convention Center Facilities District under and pursuant to the Chapter, to be known and designated as “Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California” (the “Convention Center Facilities District”).
3. The boundaries of the territory proposed for inclusion in the Convention Center Facilities District are more particularly described and shown on a map entitled “Proposed Boundaries of Convention Center Facilities District No. 2008-1, City of San José, County of Santa Clara, State of California” now on file in the office of the City Clerk, which map the City Council hereby approves. A reduced copy of the map is marked Exhibit A and is attached hereto and, by this reference, is incorporated herein and made a part of this resolution. The City Council finds that the map is in the form and contains the matters prescribed by section 3110 of the California Streets and Highways Code and directs the City Clerk to certify the adoption of this resolution on the face of the map. The City Council hereby authorizes and directs the City Clerk to record a

copy of the map with the Santa Clara County Recorder in accordance with section 3111 of the California Streets and Highways Code.

4. The City Council hereby identifies all property that may be developed for hotel purposes (as defined in the City's Municipal Code) anywhere within the City or within the City's sphere of influence, as determined by the Local Agency Formation Commission (LAFCO) of the County of Santa Clara, and which becomes annexed to the City, as "territory proposed for annexation in the future" as that phrase is used in Section 53339.3(b) of the Act.

5. It is the intention of the City Council to finance the acquisition and construction, pursuant to the Chapter, of the public facilities shown on Exhibit B attached hereto (the "Facilities"), which by this reference is incorporated herein and made a part of this resolution. All of the Facilities have an estimated useful life of five years or longer. They are public facilities that the City is authorized by law to construct, own, or operate, or to which it may contribute revenue.

6. The cost of financing the Facilities includes incidental expenses for the Facilities comprising the costs of planning and designing the Facilities, together with the costs of environmental evaluations thereof, and all costs associated with the creation of the Convention Center Facilities District, the issuance of bonds, the determination of the amount of any special taxes, or the collection or payment of any special taxes and costs otherwise incurred to carry out the authorized purposes of the Convention Center Facilities District, together with any other expenses incidental to the acquisition and construction of the Facilities. A representative list of incidental expenses proposed to be incurred are set forth on Exhibit C attached hereto, which by this reference is incorporated herein and made a part of this resolution.

7. It is the intention of the City Council that, except where funds are otherwise available, a special tax be levied on the real property within the Convention Center Facilities District sufficient to finance the following: the acquisition and construction of the Facilities, including but not limited to the payment of interest on and principal of bonds to be issued to finance the acquisition and construction of the Facilities; the making of lease payments for Facilities (whether or not in conjunction with the issuance of certificates of participation); the repayment of funds advanced by the City, or by the Redevelopment Agency of the City of San José, for the Convention Center Facilities District or for the Facilities, the repayment under any agreement (which will not constitute a debt or liability of the City) of advances of funds or reimbursement for the lesser of the value or cost of work in-kind provided by any person for the Convention Center Facilities District; all so far as permitted by the rate and method of apportionment of the special tax as described below.

8. Upon recordation of a Notice of Special Tax Lien pursuant to section 3114.5 of the California Streets and Highways Code, a continuing lien to secure each levy of the special tax shall attach to all nonexempt real property in the Convention Center Facilities District, and this lien shall continue in force and effect until four years after the levy of the special tax by the City ceases, should that ever occur.

9. It is the intention of the City Council that the proposed special tax will be collected monthly through the same mechanism by which the City currently collects its Transit Occupancy Tax from hotel properties; however, the City Council reserves the right to utilize any other lawful means of billing, collecting, and enforcing the special tax, including billing on the secured property tax roll, supplemental billing, and, when lawfully available, judicial foreclosure of the special tax lien.

10. The rate and method of apportionment of the special tax, including the maximum special tax, is set forth on Exhibit D attached hereto, which by this reference is incorporated herein and made a part of this resolution. Exhibit D provides sufficient detail to allow each landowner and hotel operator of or on property within the Convention Center Facilities District to estimate the maximum amount of special tax for which such property will be obligated.

11. Except where otherwise specified, it is the intention of the City Council, pursuant to section 53340.1 of the Act, to levy the special tax on the leasehold or possessory interests in property owned by a public agency (which property is otherwise exempt from the special tax), to be payable by the owner of the leasehold or possessory interest in such property.

12. It is the intention of the City Council, pursuant to section 53325.7 of the California Government Code, to establish the appropriations limit, as defined by subdivision (h) of section 8 of article XIII B of the California Constitution, for the 2008-2009 fiscal year, for the Convention Center Facilities District in the amount of \$500,000,000.

13. Notice is hereby given that Tuesday, November 18, 2008, at 1:30 p.m., or as soon thereafter as the Council may reach the matter, in the Council Chambers at San José City Hall, 200 East Santa Clara Street, San José, California, 95113, has been fixed by the City Council as the time and place for a public hearing to be held by the City Council to consider the establishment of the Convention Center Facilities District, the proposed rate, method of apportionment, and manner of collection of the special tax, and all other matters as set forth in this resolution. At the public hearing, any persons interested, including all taxpayers, property owners, and registered voters within the Convention Center Facilities District, may appear and be heard, and the testimony of all interested persons or taxpayers for or against the establishment

of the Convention Center Facilities District and the levy of the special tax, the extent of the Convention Center Facilities District, the acquisition or construction of any of the Facilities, the establishment of the appropriations limit, or on any other matters set forth herein, will be heard and considered.

14. Any protests to the proposals in this resolution may be made orally or in writing by any interested persons or taxpayers, except that any protests pertaining to the regularity or sufficiency of these proceedings must be in writing and must clearly set forth the irregularities and defects to which objection is made. The City Council may waive any irregularities in the form or content of any written protest and at the public hearing may correct minor defects in the proceedings. All written protests not presented in person by the protester at the public hearing must be filed with the City Clerk at or before the time fixed for the public hearing in order to be received and considered. Any written protest may be withdrawn in writing at any time before the conclusion of the public hearing.

15. Written protests by a majority of the registered voters residing and registered within the Convention Center Facilities District (if at least six such voters so protest), or by the owners of a majority of the land area within the Convention Center Facilities District not exempt from the proposed special tax, will require suspension of these proceedings for at least one year. If such protests are directed only against certain elements of the proposed Facilities or the special tax of the Convention Center Facilities District or the other proposals contained in this resolution, only those elements need be excluded from the proceedings.

16. The public hearing may be continued from time to time, but shall be completed within 30 days, except that if the City Council finds that the complexity of the Convention Center Facilities

District or the need for public participation requires additional time, the public hearing may be continued from time to time for a period not to exceed 6 months.

17. At the public hearing, the City Council may modify this resolution by eliminating any of the Facilities, or by changing the method of apportionment of the special tax so as to reduce the maximum special tax for all or a portion of the owners of property within the Convention Center Facilities District, or by removing any territory from the Convention Center Facilities District, except that if the City Council proposes to modify this resolution in a way that will increase the probable (as distinct from the maximum, which may not be increased) special tax to be paid by the owner of any lot or parcel of land in the Convention Center Facilities District, the City Council shall direct that a report be prepared that includes a brief analysis of the impact of the proposed modifications on the probable special tax to be paid by the owners of such lots or parcels of land in the Convention Center Facilities District, and the City Council shall receive and consider the report before approving any such modifications or any resolution forming the Convention Center Facilities District that includes such modifications.

18. At the conclusion of the public hearing, the City Council may abandon these proceedings or may, after passing upon all protests, determine to proceed with establishing the Convention Center Facilities District. If, at the conclusion of the public hearing, the City Council determines to proceed with the establishment of the Convention Center Facilities District, it expects that the proposed voting procedure will be by landowners voting in accordance with Section 53326(c) of the Act, as modified by Section 14.32.430 of the Chapter whereby each Hotel Property is entitled to one vote for each hotel room located on such property.

19. The City Manager is hereby directed to study the Convention Center Facilities District and, at or before the time of the public hearing, to cause to be prepared and filed with the City Council a report containing a brief description of the facilities by type that in his opinion will be required to adequately meet the needs of the Convention Center, together with estimates of the cost of financing the acquisition and construction of the Facilities, and an estimate of the incidental expenses related thereto. Upon its presentation, the report will be submitted to the City Council for review, will be available for inspection by the public, and will be made a part of the record of the public hearing. The City Manager may retain consultants to prepare the report.

20. The City Clerk shall give notice of the time and place of the public hearing in the following manner:

(a) A Notice of Public Hearing in the form required by the Act is to be published once in the *SAN JOSÉ MERCURY NEWS*, a newspaper of general circulation published in the area of the Convention Center Facilities District, pursuant to section 6061 of the California Government Code, and publication must be completed at least seven days prior to the date set for such public hearing.

(b) A Notice of Public Hearing in the form required by the Act is to be mailed, first-class postage prepaid, to each owner of land and each hotel operator within the boundaries of the Convention Center Facilities District at their addresses as shown on the last equalized assessment roll or as otherwise known to the City Clerk.

21. In the opinion of the City Council, the public interest will not be served by allowing the property owners in the Convention Center Facilities District to intervene in a public bidding process pursuant to Section 53329.5(a) of the Act.

ADOPTED this 30th day of September, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

EXHIBIT A

PROPOSED BOUNDARIES OF
CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1
CITY OF SAN JOSÉ
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

EXHIBIT B

CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1, CITY OF SAN JOSÉ COUNTY OF SANTA CLARA, STATE OF CALIFORNIA

AUTHORIZED CONVENTION CENTER FACILITIES

The Convention Center Facilities District special tax may finance any acquisition, construction, reconstruction; replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter. Whether any such facility will be financed, and the order in which any such facility will be financed, is within the sole discretion of the City Council. Additionally, pursuant to Section 14.32.300 of the Chapter, the Convention Center Facilities District special tax may be spent on the following: debt service; lease payments; costs of issuance of securities issued for the purpose of financing or refinancing Convention Center Facilities; administrative costs of the District; prepayment of such securities; direct costs of acquisition, design and construction of Convention Center Facilities; and ongoing capital repair and capital replacement of Convention Center Facilities.

EXHIBIT C

**CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1
CITY OF SAN JOSÉ
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA**

**REPRESENTATIVE LISTING OF INCIDENTAL EXPENSES
AND BOND ISSUANCE COSTS**

It is anticipated that the following incidental expenses may be incurred in the proposed legal proceedings for formation of the Convention Center Facilities District, construction or acquisition of the authorized public facilities and related bond financing and will be payable from proceeds of the Bonds or directly from the proceeds of the Special Tax:

- Special tax consultant services
- City, Participating District staff review, oversight and administrative services
- Bond Counsel and Disclosure Counsel services
- Financial advisor services
- Special tax administrator services
- Appraiser/Market absorption consultant services
- Initial bond transfer agent, fiscal agent, registrar and paying agent services, and rebate calculation service set up charge
- Bond printing and Preliminary Official Statement and Official Statement printing and mailing
- Publishing, mailing and posting of notices
- Recording fees
- Underwriter's discount
- Bond reserve fund
- Capitalized interest
- Governmental notification and filing fees
- Credit enhancement costs
- Rating agency fees
- Continuing disclosure services

The expenses of certain recurring services pertaining to the Convention Center Facilities District may be included in the special tax levy. The foregoing enumeration shall not be regarded as exclusive and shall be deemed to include any other incidental expenses of a like nature which may be incurred from time to time with respect to the Convention Center Facilities District.

EXHIBIT D

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

CITY OF SAN JOSÉ CONVENTION CENTER FACILITIES DISTRICT NO. 2008-1

A Special Tax of Convention Center Facilities District No. 2008-1 ("CCFD No. 2008-1") of the City of San José (the "City") shall be levied on all Assessor's Parcels within CCFD No. 2008-1 and collected as provided herein commencing in Fiscal Year 2008-2009 in an amount determined by the City through the application of the rate and method of apportionment of the Special Tax set forth below. All of the real property within CCFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. *DEFINITIONS*

The terms hereinafter set forth have the following meanings:

"Assessor's Parcel" means a lot or parcel shown in an Assessor's Parcel Map with an assigned assessor's parcel number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by assessor's parcel number.

"CCFD Administrator" means an official of the City, or designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes for CCFD No. 2008-1.

"Chapter" means Chapter 14.32 of the San José Municipal Code, as amended.

"City" means the City of San José.

"City Council" means the City Council of the City.

"County" means the County of Santa Clara.

"Director of Finance" means the finance director of the City.

"Exempt Property" means all Assessor's Parcels within CCFD No. 2008-1 which are exempt from the Special Taxes pursuant Section E herein.

"Facilities" means acquisition, construction, reconstruction; replacement, rehabilitation or upgrade, with an expected useful life of 5 years or longer, of any Convention Center Facility as defined in Section 14.32.220 of the Chapter.

“Fiscal Year” means the period commencing on July 1 of any year and ending the following June 30.

“Hotel Property” means an Assessor’s Parcel of Taxable Property which consists of one or more buildings or structures situated in the City that has, on file with the Director of Finance, a transient occupancy registration certificate, including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, guesthouse, bed and breakfast inn, apartment house, dormitory, public or private club, mobilehome or house trailer at a fixed location, or other similar structure or portion thereof situated in the city, which is occupied or intended or designed for Occupancy by Transients for dwelling, lodging or sleeping purposes.

“Hotel Transient Unit” means a room within Hotel Property as to which the Special Tax may be levied in that it is used for Transient Occupancy.

“Maximum Special Tax” means the maximum Special Tax determined in accordance with Section C, which may be levied by CCFD No. 2008-1 in any Fiscal Year on an Assessor’s Parcel of Taxable Property.

“Occupancy” means the use or possession, or right to the use or possession of any Hotel Transient Unit, or portion thereof.

“Operator” means the person who is proprietor of the Hotel Property, whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, or any other capacity. Where the operator performs his functions through a managing agent of any type or character other than an employee, the managing agent shall also be deemed an operator, and shall have the same duties and liabilities as his principal.

“Owner” means the landowner, owner of land, or property owner of Hotel Property, except that if the fee owner of the Hotel Property is a government entity, ‘Owner’ means the lessee of the government entity.

“Rent” means the consideration charged for the Occupancy of Hotel Transient Units valued in money, whether to be received in money, goods, property, labor, service, or otherwise.

“Special Tax” means the special tax authorized to be levied by CCFD No. 2008-1 pursuant to the Chapter to fund the Facilities.

“Taxable Property” means all Assessor’s Parcels that are not exempt from the Special Tax pursuant to law or the Rate and Method of Apportionment of Special Tax.

“Transient” means a person who exercises occupancy or is entitled to occupancy by reason of concession, permit, right of access, license, or other agreement for a period of thirty consecutive calendar days or less, counting portions of calendar days as full days.

B. CLASSIFICATIONS OF ASSESSOR’S PARCELS

Each Fiscal Year using the definitions above, all Assessor’s Parcels within CCFD No. 2008-1 shall be classified as either Hotel Property or Exempt Property. Commencing with Fiscal Year 2008-2009 and for each subsequent Fiscal Year, all Hotel Property shall be subject to Special Taxes pursuant to Sections C and D below.

C. MAXIMUM SPECIAL TAX RATE

Commencing in Fiscal Year 2008-2009, each Assessor's Parcel classified as Hotel Property within CCFD No. 2008-1 shall be subject to a Special Tax. The Maximum Special Tax for each Assessor's Parcel classified as Hotel Property shall not exceed a percentage of the Rent charged by the Operator on behalf of the Owner as identified in Table 1 below.

TABLE 1
MAXIMUM SPECIAL TAX RATES

Fiscal Year	Maximum Special Tax
2008-2009	1% x Rent
2009-2010	2% x Rent
2010-2011	3% x Rent
2011-2012 and thereafter	4% x Rent

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2008-2009, and for each subsequent Fiscal Year, the City Council shall levy Special Taxes on all Assessor's Parcels classified as Hotel Property up to the Maximum Special Tax rate defined in Section C above. Special Taxes shall be considered levied upon Hotel Property by the City Council at the point in time when Rent is charged by the Operator.

E. EXEMPTIONS

No Special Tax shall be levied on any Assessor's Parcel not classified as Hotel Property.

F. MANNER OF COLLECTION

The Special Tax C shall be collected monthly by the City. Each Operator on behalf of the Owner shall, on or before the last day of each calendar month, submit the Special Taxes levied against their Hotel Property to the Director of Finance of the City and shall include a special tax obligation form provided by the City. Special Taxes associated with Rent that is charged for Transient Occupancy which overlap two calendar months shall be considered levied and due in the calendar month the Transient ceases Occupancy of the Hotel Transient Unit(s). Special Taxes associated with Rent that is paid by credit card shall be deemed levied and collected on the date that the credit card is presented as payment to the Operator.

G. FAILURE TO SUBMIT SPECIAL TAX

If any Owner, or Operator on behalf of Owner, fails or refuses to pay the Special Tax levied, the Director of Finance shall proceed in such manner as he may deem best to obtain facts and

information on which to base his estimate of the Special Tax. As soon as the Director of Finance shall procure such facts and information as he is able to obtain upon which to base the Special Tax for such Assessor's Parcel classified as Hotel Property, the Director of Finance shall proceed to determine the amount of such Special Tax due. In case such determination is made, the Director of Finance shall give a Determination of Special Tax Due by serving it personally or by depositing it in the United States mail, postage prepaid, addressed to the Owner at its last known place of address. Such Owner, or Operator on behalf of the Owner, may file an appeal as prescribed in Section I herein.

H. SPECIAL TAX AUDIT

It shall be the duty of the Owner, or Operator on behalf of the Owner, for each Assessor's Parcel classified as Hotel Property that is subject to the Special Tax to keep and preserve, for a period of three years, all records as may be deemed necessary by the City (and that will, at a minimum, include a record of all Rents collected) to determine the Special Taxes submitted by such Hotel Property to the City. The City shall have the right to inspect such records at all reasonable times.

I. APPEALS

Any Owner, or Operator on behalf of the Owner, claiming that the amount or application of the Special Tax is not correct, may appeal to the City Council by filing a notice of appeal with the City Clerk within fifteen calendar days of the serving or mailing of the Determination of Special Tax Due. The City Council shall fix a time and place for hearing such appeal, and the City Clerk shall give notice in writing to such Owner and Operator at their last known place of address. The findings of the City Council shall be final and conclusive, and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any Special Tax found to be due shall be immediately due and payable upon the service of the City Council findings. If the City Council decision requires that the Special Tax for an Assessor's Parcel be modified or changed in favor of the Owner, or Operator on behalf of Owner, a cash refund shall not be made, but a credit shall be given against future Special Taxes on that Assessor's Parcel.

J. TERM OF SPECIAL TAX

The authority of the City Council to levy the Special Tax on all Assessor's Parcels classified as Hotel Property within CCFD No. 2008-1 in accordance with Section D is perpetual.